

# Defending Felony DUI Cases

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# FDUI

- There are situations in which hope and fear run together, in which they mutually destroy one another and lose themselves in dull indifference.

Johann Wolfgang von Goethe

# 56-5-2945

- 💧 A person who, **while under the influence** of alcohol, drugs, or the combination of alcohol and drugs, **drives a motor vehicle** and when driving **does any act forbidden by law** or **neglects any duty imposed by law** in the driving of the motor vehicle, which act or neglect **proximately causes great bodily injury or death** to another person, is guilty of the offense of felony driving under the influence.

# Penalties

- ◆ GBI- 30 Days – 15 Years and a fine of \$5100 -\$10,100.
- ◆ Death- 1 Year – 25 Years and a fine of \$10,100 -\$25,100.
- ◆ Minimums are mandatory.
- ◆ FDUI causing death is a violent offense.

# License Suspension

- ◆ Indefinite DL suspension until:
  - ◆ released from custody,
  - ◆ enrolled in ADSAP,
  - ◆ reinstatement fee paid,
  - ◆ form SR 22 posted,
  - ◆ IID DL for 3 years if GBI and 5 years if death results

# Driving

- ◆ The word “drive” under 56-5-2930 requires the vehicle to be in motion to constitute the offense, as shown by direct or circumstantial evidence.
  - ◆ State v. Graves, (S.C. 1977) 269 S.C. 356, 237 S.E.2d 584

# Under the Influence

“The Defendant requested the Court to describe the words materially and appreciably impaired as being the definition of what it means to be under the influence. The terms “materially and appreciably impaired” derive from the DUI statute, ... However, this language is not included in the elements of Felony DUI pursuant to statute, ..., and, under the facts of this case, the Court declined to instruct this language.”

# Great Bodily Injury

- ◆ Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, of protracted loss or impairment of the function of any bodily member or organ.



# Types of Evidence

- 💧 Accident Investigation
- 💧 Blood Alcohol Concentration
- 💧 Physical Manifestations of Impairment
- 💧 Drug Concentration

# First Things First

## Put the team together

- 💧 Fact Investigator
- 💧 Accident Reconstructionist
- 💧 Toxicologist
- 💧 Mitigation Specialist

# Fact Investigator

- 💧 Interview witnesses
- 💧 Examine the police investigation to determine what is missing
- 💧 Collect independent information
  - 💧 Video recording
  - 💧 FOIA Police training records

# Accident Reconstructionist

- ◆ Examine the scene
- ◆ Examine the vehicles
- ◆ Determine location of impact
- ◆ Determine speed of vehicles
  - ◆ Black Box Data
  - ◆ Independent Measurements
  - ◆ Video Animations (see *Hamrick v. State*, (S.C. 2019) 426 S.C. 638, 828 S.E.2d 596.

# Toxicologist

- 💧 Discovery Requests
- 💧 Specimen Collection
  - 💧 Time of Collection
  - 💧 Site Prep
  - 💧 Collection Kit
  - 💧 Collection Technique
- 💧 Chain of Custody
- 💧 Sample Storage
- 💧 Lab Protocols and Proficiency
- 💧 Sample Analysis
  - 💧 Chromatogram Review

# Blood Evidence

- ◆ 56-5-2946??

- ◆ Search Warrant

- ◆ “The obtainment of hospital records for D will help this investigator determine if D was impaired at the time of the collision. The hospital records, to include any blood work listing a blood alcohol concentration at the time of admission would aid in this investigation by helping to determine whether D did consume any alcoholic beverages prior to operating his vehicle and whether that consumption of alcoholic beverages was a determinative factor in the collision.”

# Blood Evidence

- 💧 Hospital Blood analysis is not the same as forensic analysis.
- 💧 Most hospitals use enzymatic immunoassays of **serum**.

# Mitigation Specialist/You

- 💧 Know the Client
- 💧 Treat the Issues
- 💧 Know the Victim
- 💧 Reach out to the Victim
- 💧 Decide where you stand on the civil claim.